

From: Steve Litt
To: Microsoft ATR
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Subject: Microsoft Settlement

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To:
U.S. District Judge Colleen Kollar-Kotelly

1/24/2002

Dear Judge Kollar-Kotelly:

Reviewing the proposed stipulation and revised final judgment against Microsoft (the settlement), I find the proposed settlement wholly inadequate to restore competition in the marketplace, to provide remedy to those who have been harmed, to prevent future illegal acts by Microsoft, or to establish even a modicum of respect for the credibility of the law.

It is likely that provisions III.J.2.b and c will be used to deny API access to Open Source projects. The cost associated with III.J.2.d is not affordable by the vast majority of Open Source projects, so it further denies access, even if Microsoft's restrictions are deemed "unreasonable". I believe it's no accident Microsoft wanted this language in the settlement.

Open Source (such as Linux) is Microsoft's only remaining competition, due to the extreme marketplace distortion created by Microsoft's illegal acts, such as Microsoft's revenue starvation techniques (see ""We are going to cut off their air supply" in I.16 of the Civil Action No. 98-1232 complaint). Microsoft cannot kill Open Source by "cutting off their air supply" because the Open Source development model requires no revenue. So instead of competing head to head on features and reliability, Microsoft seeks to hamper Open Source by denying them API access in order to interoperate with Microsoft products.

There's no reason to restrict access to the API. API's are not code -- they're just a standard. A secret API does not protect one from viruses. In fact, Open Source products, whose API is accessible by all interested parties, has a much better record than Microsoft when it comes to security. Likewise, "piracy protection" does not require secret API calls. Microsoft wants provisions III.J.2.b, c and d to restrict their competition, not to prevent security threats or piracy.

If this settlement is approved, Microsoft will have used the court to further sabotage their competition.

Even more unsettling is the enforcement of this settlement. Provision IV.B.6.a places the three member technical committee assigned to enforce this settlement on the payroll of Microsoft. This is an obvious conflict of interest. It would be better to fine Microsoft an extra few million, and have the government pay the technical committee out of those funds.

Worse yet, Microsoft has every incentive to violate this settlement agreement. Section V, parts A and B, provide that the settlement will last 5 years, but if Microsoft violates the settlement it will last a maximum of 7 years. It basically gives them permission to thumb their nose at the law for 7 years, and repress the marketplace for 7 years.

What does this settlement say to the average citizen? Microsoft was found to be an illegal monopoly by Judge Jackson, and this finding was upheld by the appeals court. And their punishment is 7 years of toothless observation, during which time the very language of the settlement provides them with tools to attempt to destroy their one remaining competitor. This is akin to a bank robber being found guilty initially and on appeals, and being placed on observation for 7 years. No repaying the bank. No remorse required. No punishment. No real disincentive to rob again. This settlement weakens respect for the law. For the people of this country, this settlement sets a horrible precedent.

I believe Microsoft should be subjected to a structural remedy, or at the very least very serious behavioral remedies. Nothing short of that would change their behavior. Throughout their history, Microsoft has shown themselves to be scoundrels:

- * Caldera alleged that Microsoft had placed booby traps in their Windows 3.0 product to prevent its installation over Microsoft competitor DR DOS. Rather than prove their innocence, Microsoft paid Caldera \$155 million. (http://seattletimes.nwsourc.com/news/technology/html98/cald_20000111.html)

- * Microsoft created a "Windows only" version of Java, and it took a lawsuit by Java inventor Sun to stop them from removing Java's most sacred feature -- write once run everywhere.

- * Using predatory pricing, Microsoft destroyed rival Netscape, and removed all incentive for anyone to create a competing browser.

- * Microsoft took the Open Standard, Open Source Kerberos authentication standard, added code to make it incompatible with Open Source implementations, and then declared the revised product their intellectual property, thus eliminating Open Source/Windows interoperability. Only those with an iron clad monopoly would cynically cut off the rest of the world like

that.

* Unable to kill Open Source with their customary revenue starvation techniques, Microsoft's Jim Allchin put out feelers to congress to outlaw Open Source (see <http://news.cnet.com/investor/news/newsitem/0-9900-1028-4825719-RHAT.html>).

* Microsoft attempted to commandeer all content passing through their Passport server, regardless of copyright, patent or trade secret. (see <http://www.theregister.co.uk/content/4/18002.html>). In that case their bluff was called by privacy advocates and newspapers, and they backed down.

* Microsoft's .Net architecture is required for many features of their new operating system, Windows XP.

* Microsoft is in the process of converting everyone to their .Net architecture, which funnels all communication through Microsoft's Passport server. If Microsoft succeeds, they will control the single tollgate on the entire Internet, and they will no longer need an OS, middleware or browser monopoly.

In considering whether the proposed settlement is prudent, please keep in mind that Microsoft has continually behaved as if their core competency was monopolism. Their product choices were based not on customer needs, but on killing the competition. With their .Net architecture fast on the way to monopoly status, it's clear that their past, present, and future is dedicated to monopolism. Please stop this illegal monopolistic behavior, once and for all.

Finally, as you read the many emails praising the settlement, or even saying it's too tough on Microsoft, consider their source. On 4/10/1998 the L.A. Times reported that Microsoft was paying freelance writers to pretend to be ordinary citizens and write letters to the media (http://seattletimes.nwsourc.com/news/business/html98/pr_041098.html). On 8/23/2001 the L.A. times reported that Microsoft had paid freelance writers to pretend to be ordinary citizens and write to the state attorneys general asking the attorneys general to go easy on Microsoft. Two of the purported "citizens" turned out to be dead. (http://seattletimes.nwsourc.com/html/nationworld/134332634_microlob23.html).

Judge Kollar-Kotelly, it's very likely that most of your pro-Microsoft emails and letters were paid for by Microsoft. If one figures \$75 per letter, Microsoft could fund a million letters for \$75 million-- half what they paid Caldera to stop the DR DOS sabotage suit.

Please protect our economy, our nation and our society from these predators. Reject the settlement, and construct a remedy that punishes past illegal acts and prevents future ones.

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